IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12460 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

KAMLESHBHAI AMBALAL THR' POWER OF ATTORNEY AND OTHERS
Versus
STATE OF GUAJRAT THR' ADDL.PRINCIPAL SECRETARY AND ANOTHER

==========

Appearance :
MR BS PATEL with MRS RANJAN B PATEL for the Petitioners
MR KL PANDYA, ASSISTANT GOVERNMENT PLEADER for Respondents

==========

CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

Date : 22/11/2005

ORAL JUDGMENT

Rule. Mr.K.L.Pandya, learned Assistant Government Pleader waives service of notice of rule on behalf of the respondents.

With the consent of the learned advocates, the petition is heard and finally disposed of today.

The petitioners in this petition have prayed for quashing and setting the order passed by the Collector, respondent No.2 dated 26.04.2004, Annexure-A and 20.12.2004, Annexure-B by the Principal Secretary, Revenue Department (Appeals), the respondent No.1 upholding the order Annexure-A respectively.

The petitioners, as claimed by them are the owners of the land bearing revenue survey No.549/1 to 549/4 situated in the Sim of village Makarba, Taluka City Ahmedabad. On 04.03.1996, the petitioners purchased the land as agriculturists from the original owner of the land, who has already paid the premium when he purchased the land in the year 1993. On 14.03.1996, Talati-cum-Mantri mutated the entry in the record of right bearing No.7954 for the sale deed executed and the entry in favour of the petitioners had been certified. According to the petitioners, thereafter, they erected a compound wall for the protection of the crops and two rooms for the cattle and servants and were paying the revenue regularly to the Government. On 31.01.2003, the respondent No.2 issued a notice under Section 79/A of the

Bombay Land Revenue Code to show cause as to why the land purchased by the petitioners be not confiscated. The petitioners filed a detailed reply dated 18.02.2003, wherein they have shown their willingness to pay the premium as per the condition imposed in the order dated 27.04.1993, more particularly condition No.3 by the District Collector, Ahmedabad. The respondent No.2, however, on 26.04.2004 passed an order of confiscation with respect to land bearing survey No.549/1 to 549/4. The petitioners preferred immediately a Revision Application under Section 211 of the Bombay Land Revenue Code. It appears that as the revisional authority has not stayed the order passed by the 2nd respondent, the petitioners approached this Court and obtained certain orders. However, it is not necessary to refer those orders, but the fact remains that the 1st respondent rejected the revision preferred by the petitioners. Hence, the present petition.

Learned advocate Mr.B.S.Patel appearing for the petitioners submitted that the petitioners have, in fact, while challenging the impugned order also in the alternatively submitted that the petitioners are prepared to pay the premium. He further submitted that even the 2nd respondent in the order Annexure-A has stated that by

committing breach of condition No.6, the Government has suffered loss of the premium. In view of this, he submitted that the 2nd respondent could have directed the petitioners to pay the premium by regularizing the transaction instead of passing the order of confiscation of the land.

Having perused the order Annexure-A, it is clear that the petitioners have not only challenged the order on merits on other grounds, but have also alternatively submitted that they are prepared to pay the premium that may be decided by the authorities. 2nd respondent in the order Annexure-A has also observed that the petitioners by committing the breach of condition No.6, have caused loss of premium to the State Government. It is to be noted that the previous owner from whom the petitioners purchased the land in question was also subjected to pay the premium. That can be seen from the order No.CB/LND-1/A.3800/GH 81 dated 27.04.1993 passed by the District Collector, Ahmedabad. In that view of the matter, the case of the petitioner can also be considered in line with the condition imposed in the said order. Since the petitioners are prepared to pay the amount of premium, it is not necessary for me to decide the other question raised by Mr.Patel.

In the result, the petition is allowed. The orders Annexure-A and Annexure-B passed by the respondents are set aside. The matter is remanded to the District Collector, Ahmedabad with a direction that instead of confiscating the land, he shall decide the question of premium that may be payable by the petitioners. The District Collector shall decide the said questions after hearing the petitioners while bearing in mind the order dated 27.04.1993 and other relevant circulars issued by the State Government. Rule is made absolute to the aforesaid extent with no order as to costs.

(KSHITIJ R.VYAS, J.)

***Shitole**